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BOOK DEPARTMENT.

REVIEWS.

Verfassung des deutschen Reichs, mit Einleitung und Kommentar.

Von Dr. ADOLF ARNDT, Professor of Law in the University of Halle. Pp. 339. Berlin : J. Guttentag, 1895.

Professor Arndt has done the students of public law a substantial service in this edition of the German Federal Constitution. The book is divided into four parts; the first consists of the text of the German Federal Constitution in its present form; the second part contains a brief history of the foundation of the North German Confederation and the establishment of the German Empire, also a brief discussion of the constitutional nature of the German Empire, including the relation between the federal government and the individual States; the third part contains a commentary upon the text of the federal constitution, taking up each clause separately in the order in which they stand in the instrument; the fourth part contains a copy of the various treaties between the North German Confederation and the South German States in regard to their entrance into the North German Confederation and its conversion into the German Empire, followed by the text of the law of June 1, 1870, relating to federal and State citizenship.

A legal instrument like the federal constitution of Germany, which may be practically amended by a law containing no reference to the fact that it does change the constitution, is in special need of a careful commentary. The editor has in this case introduced into the body of the constitution the changes which have been made without any indication in the text, as printed at the beginning of the book, that such changes have been made, or of the time at which they were made. Thus, the constitution, as agreed upon in the first instance, enumerates the States which constituted the German Empire at the time of the adoption of the constitution. The editor adds the island of Heligoland which became a part of the German Empire December 15, 1890, and a part of Prussia February 18, 1891, and adds also the imperial territory Alsace-Lorraine. Article XXIV, defining the legislative period for which the Reichstag is chosen, provided originally that it should be for three years. This was altered by an amendment

to the constitution March 19, 1888, to five years. The text of Dr. Arndt gives five years with no indication that it had ever been anything else.

There are some conveniences, of course, in such an edition of the constitution, as one can tell exactly what provisions are in force at a given time without the difficulty of comparing the original wording of the text with the present wording; but it is on the whole an undesirable arrangement for the student of politics. It would have been much clearer to the foreign student if the original text had been printed, and then the changes made in the constitution by formal amendments to the instrument itself, and finally, the changes made in the instrument by laws which change its meaning, even though they are not, formally speaking, amendments to the instrument itself. Nor is the editor quite consistent with himself in the plan which he adopts, for when he comes to print the individual paragraphs, to be followed by notes and commentary, he allows the first article to stand as it was in the original instrument, whereas Article XXIV he prints with the modifications mentioned above. This procedure may be justified by the fact that the latter took the shape of a formal amendment, while the change in Article I was effected by treaty and laws which took no regard of the language of the federal instrument; but, in any case, it would have been much clearer if the reason for such a method had been given.

The comment of the editor upon Article V is interesting and significant. This article* declares that "the legislative power of the empire shall be exercised by the Federal Council and the Diet. A majority of the votes of both bodies shall be necessary and sufficient for an imperial law." This would seem to imply, on the face of it, that if the two bodies agree upon a bill, this agreement should be equivalent to its passage. Professor Arndt takes the ground that this means nothing more than that such agreement shall be sufficient to determine the form of the bill, and that before it can become a law, the Federal Council must send the bill through the Imperial Chancellor to the Emperor, whose duty it is to prepare and publish the laws of the Empire,† and that the Federal Council need not send such a bill to the Emperor, even though it may have proposed the bill itself to the Reichstag, and the latter had accepted it without change. He seems to consider this act of sending the bill to the Emperor as the final sanction of the law, agreeing in this point with some of the most prominent German publicists. He does not allow,

* Compare "Federal Constitution of Germany." Translated by EDMUND J. JAMES. Publications of the University of Pennsylvania, Philadelphia, 1890, p. 21.

† Compare Article XVII, James, "Federal Constitution," p. 25.

however, that the power of the Emperor to prepare and publish the laws of the empire, gives him any right to refuse to do so, and thereby practically exercise a veto upon imperial legislation.*

Commenting upon the distribution of votes in the Federal Council among the various States, the editor introduces a quotation from a speech by Prince Bismarck in the Constitutional Diet of 1867. Prince Bismarck calls attention in that speech to the fact that in distributing these votes, there was a declared intention of disregarding entirely the element of population of the different States. This is a circumstance which foreign students of the German constitution find it hard to appreciate. Even such an authority as Professor Bryce states in his "American Commonwealth" (last edition), that the votes in the Federal Council are distributed among the States on the basis of population.

The peculiar character of the German federal constitution and the way in which agreements among the different States may determine the meaning of the instrument, are well illustrated by Article VIII relating to the committees of the Federal Council. This prescribes that the Emperor shall appoint the members of the committee on the Army and Fortifications, except that Bavaria shall have one member on that committee. This of itself is a peculiar feature, that a committee of a legislative body should be appointed by some authority outside of the body itself, or, that the right should be reserved to one of the States of always having a representative upon a given committee. But the Emperor, by military agreements with Saxony and Wurtemberg, has bound himself to give to each of these States also a representative on this committee, thereby limiting, through a private agreement his constitutional power as Emperor of Germany. There are many other illustrations of the same sort in the constitutional system of the empire.

The commentary of the editor upon the third clause in Article VIII is extremely unsatisfactory because it conveys no idea to one who does not know the fact, of the peculiar function of the committee on Foreign Affairs.

The editor's comment upon Article LXXVIII, relating to amendments to the constitution, is significant and characteristic. That article † declares that amendments to the constitution shall be made by legislative enactment; they shall be considered as rejected when fourteen votes are cast against them in the Federal Council. The author declares that by amendments to the constitution, are to be

* See "The Constitutional Position of Prussia in the German Empire." By EDMUND J. JAMES. *Nation*, April 26, 1888, New York.

† Compare James, "Federal Constitution," p. 43.

understood only formal changes in the instrument itself; not changes in existing constitutional law. The latter kind of change may, it is to be presumed, be made by a simple law without any reference to the restrictive provision of this section. He also declares that the ceding to Prussia of administrative powers by the other States, is not to be considered a change in the constitution. Nor, is an agreement on the part of the Emperor, by which he binds himself toward individual States, to use his constitutional powers only in certain ways, to be considered a change in the constitution.

Professor Arndt implies that it is the business of the Emperor to decide whether a law changing the constitution, has been passed in the Federal Council by the requisite majority. If this is true, it practically gives to the Emperor a veto upon all legislation which he regards as in conflict with the constitution, and for which, in his opinion, the number of votes requisite for a constitutional change has not been cast, which seems to stand in conflict with the view mentioned above, that the Emperor has not a veto power.

The book will be found a useful addition to the literature relating to the imperial constitution of Germany. The author, in his brief discussion, shows a much greater familiarity with English and American constitutional law than most German authorities on public law.

EDMUND J. JAMES.

Life and Labour of the People in London. Vols. V and VI.
Edited by CHARLES BOOTH. Pp. 416. Price, \$3 each. London and
New York: Macmillan & Co., 1895.

Since the review of the second volume of this great work appeared in the *ANNALS** the matter contained in that and the preceding volume has been rearranged and published in four volumes, so that the present volumes, though numbered V and VI, are a direct continuation of the two volumes previously noticed. The first three books analyze and describe the population of the metropolis in respect to degree of poverty or wealth and the character of the homes, the fourth treats of East London Industries, while the fifth and sixth volumes, together with the seventh, which is soon to follow, analyze the whole population in respect to employment and conditions of labor.

After the introduction by the editor, each chapter of the two volumes before us is credited to one of Mr. Booth's assistants, of whom all but two were contributors to the preceding volumes. But the uniformity of style and method of treatment reveal the editor's

* Vol. ii, p. 854, May, 1892.